TiVo's *Ex Parte* Comments on CEA Petition on the *Second DTV Periodic Review Order*

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The FCC Should Clarify its Rules to Require DTV Receivers to Respond to a Single, Alternate U.S. Ratings System

- The change to the V-chip rule was made without notice and arguably requires response to multiple ratings systems
- Consumers do not need more than a single alternate ratings system
- The proposed system may result in a windfall to a private party that gamed the system
- The Commission should clarify or revise the V-chip rule to require a single alternate ratings system.

The New V-chip Rule Arguably Requires DTV Receivers to Respond to Multiple Alternate Ratings Systems Embedded Within the DTV Signal

- Rule 15.120(d)(2) states that DTV receivers "shall be able to respond to changes in the content advisory system."
- This rule arguably requires DTV receivers to accommodate an unlimited number of new ratings schemes embedded within a DTV Signal (*i.e.*, information transmitted pursuant to EIA-766-A)
- Parties were not afforded an opportunity to comment on this new system

Consumers Do Not Need More Than A Single, Alternate Ratings System

- It is doubtful that a more than one alternate ratings system will be desirable during a single product's life-cycle
- Each new ratings system will require cooperation among a variety of stakeholders and likely will take several years to create
- Each new ratings system will require consumer education and outreach, because each new ratings system will require new user preference settings
- Typical CE product life is about four years, unlikely that one new ratings system would be agreed upon and deployed every four-five years
- Legacy ratings systems could be hardwired into new DTV receivers or sent to deployed DTV receivers via software update (*i.e.,* not in the DTV signal). TiVo could upgrade entire installed base within 12 months

The FCC Unknowingly Granted a Windfall to Tri-Vision International to the Detriment of U.S. Consumers

- In this proceeding Tim Collings advocated an “Open V-chip” requirement without disclosing Tri-Vision’s U.S. patent, which purportedly covers the ability to respond to two or more alternate ratings systems embedded in the DTV signal
- Tri-Vision has touted its regulatory coup to Wall Street
- Thus, the FCC unknowingly granted a windfall to Tri-Vision International to the detriment of U.S. consumers
- Tri-Vision’s proposed license terms are unreasonable and discriminatory
- This violates the Commission’s long-standing patent policy to obtain relevant patent information so that the rules will not be prejudiced by unreasonable royalty or licensing policies of patent-holders

Tri-Vision Claims that its U.S. Patent Covers "Open V-chip"

- Claim 7 of US Patent No. 5,828,402 reads in relevant part:

  "A method for selectively blocking video signals … comprising the steps of:
  - Receiving first configuration information embedded in a first television channel …
  - Receiving second configuration information embedded in a second television channel…
  - Storing … user preference information in … memory
  - Receiving a video signal [which includes] embedded information specifying [one of the] information schemes and current levels for one or more [multi-level] categories…
  - Extracting said embedded information and comparing said extracted information with said stored preference information for said specified information scheme…"

- Tri-Vision believes that a DTV receiver with the "ability to process [multiple] new ratings systems" infringes its U.S. Patent. *See* Press Releases dated (8/4/04); *see also* Monthly Corporate Update December 2004 (the "FCC mandated 'Open V-chip'").

- Tri-Vision has not suggested that a DTV receiver that accommodates a single alternate ratings system embedded in the DTV signal would infringe; Tri-Vision and Collings fail to mention this in their Opposition to CEA's Petition.

Tri-Vision Has Touted its Regulatory Coup to Wall Street

- In an Aug. 4, 2004 press release (the date of adoption of the Second DTV Review Order), Tri-Vision stated, “The FCC ruling will clarify for manufacturers the necessity to license Tri-Vision’s US Patent.”
- Tri-Vision provides links to favorable Wall Street analyst reports from eResearch (Buy) and Northern Securities (Strong Buy) following CEA Petition, stating that the analyst reports
  - “ensure[] the investment community full [*sic*] understands that the recent CEA Petition to the FCC should have little if any impact on Tri-Vision’s licensing program. ¶ Tri-Vision is well underway with its licensing program, strengthened by the fact that the FCC Report & Order became law on November 4, 2004 and manufacturers are interested in signing licenses for Tri-Vision’s patented v-chip technology. ”
- Tri-Vision provides a link to a research report from Northern Securities touting “first royalty license agreement under the new FCC ruling.”

The FCC Unknowingly Granted a Windfall to Tri-Vision International to the Detriment of U.S. Consumers

- Collings argues Tri-Vision has fully disclosed its patented technology and has submitted IP Proffer Letters; but in this proceeding Collings did not inform the FCC of its US Patent and failed to disclose that Tri-Vision believes “Open V-chip” is covered by the patent, but single, alternate ratings systems are not

- If the FCC does not revise the rule, most or all CE manufacturers will either have to take a license (an offer they can’t refuse) or litigate

- Consumers will have to fund Tri-Vision’s windfall through unnecessarily expensive DTV receivers

- As noted above, it is far from clear a second alternate ratings system would ever be desirable even in the absence of alleged patent rights. Will consumers want new ratings systems with multiple levels and categories rolled out every 12 months? Will there be accidental mismarking of content?

- Per unit royalties will negatively affect commercial availability of DTV navigation devices

Tri-Vision's Proposed License Terms Are Unreasonable And Discriminatory

- Tri-Vision's proposed license fee is unreasonable ($1.25 per unit for a single patent only necessary if the FCC mandates multiple ratings systems embedded in DTV signals)
  - Compare to MPEG-2 Patent Portfolio License, (roughly 650 patents, including 90 U.S.) for implementing MPEG2 video for a license fee of $2.50 per unit.
- Tri-Vision is using discriminatory licensing tactics to coerce DTV receiver manufacturers into taking an unreasonable license long before the March 16, 2006 deadline
  - Tri-Vision has threatened to raise license fee to $1.55 per unit if TiVo does not sign agreement by Jan. 31, 2005; Tri-Vision stated that it may raise license fee again after June 30, 2005
  - Discriminates against manufacturers who have not decided whether to include DTV receivers in DVRs and other video interface equipment or who attempt in good faith to design products so they don't infringe
- Based on the MPEG patents, a royalty of a few cents per unit would be in the range of reasonableness, but certainly not $1.25 or $1.55
- A most favored licensee provision would ensure a level playing field

The FCC Should Grant the CEA Petition to Clarify or Amend the V-chip Rule

- The FCC should clarify its rules as requested by the CEA to require response to a single alternative ratings systems, *i.e.,* rating region 0x05, representing the alternate U.S. contend advisory system
- This will be more than adequate to permit judicious, well-timed changes to the ratings system, in line with natural consumer electronics equipment life-cycles
- Consumers do not need, and would be disadvantaged by frequent, rapid changes to the ratings system
- One party, that gamed the system, will be less likely to receive a windfall that the FCC's patent policy was crafted to avoid
- Consumers will not bear the burden of potential, unreasonable patent royalties